

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BRODERICK K. HAWKINS,)
Petitioner,)
vs.) Case No. 4:13CV01246 ERW
JEFF NORMAN,)
Respondent.)

MEMORANDUM AND ORDER

Before the Court is petitioner’s “Motion to Challenge this Court’s Determination of U.S.C. § 1915,” concerning the assessment of a filing fee in this case [ECF No. 12]. As more fully set forth below, the Court will grant petitioner’s motion and will order the Clerk of Court to administratively close this case.

On or about June 28, 2013, petitioner filed an “Affidavit of Facts to Support the Motion Pursuant to Federal Rules of Civil Procedure 60(b)” [ECF No. 1] and a separate motion for leave to proceed in forma pauperis [ECF No. 2]. Although the two documents bore the cause number of petitioner’s former habeas corpus action, *Hawkins v. Norman*, No. 4:02-CV-793-ERW (E.D. Mo.), the Clerk opened a new case file, assigning a new cause number. On November 16, 2013, the Court issued a Memorandum and Order [ECF No. 5], granting petitioner in forma pauperis status and assessing an initial partial filing fee of \$2.05. In addition, the Court ordered petitioner

to show cause why this action should not be dismissed as time-barred. Petitioner subsequently filed a motion for reconsideration of the calculation of his initial filing fee, which the Court granted; petitioner was assessed a new filing fee of \$1.77 [ECF No. 7]. On September 30, 2013, the Court received a payment from petitioner in the amount of \$2.05.

Liberally construing petitioner's "Motion to Challenge this Court's Determination of U.S.C. § 1915," petitioner is claiming that his Rule 60(b) motion was mistakenly filed as a new action and that he should not have been assessed a filing fee. The Court agrees, and therefore, the Clerk will be ordered to administratively close this action and transfer certain documents, as set forth below, to petitioner's former habeas case. Once this is accomplished, the Court will review petitioner's response to this Court's September 16, 2013 show cause order [ECF No. 11].

Accordingly,

IT IS HEREBY ORDERED that petitioner's "Motion to Challenge this Court's Determination of U.S.C. § 1915" [ECF No. 12] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of Court shall administratively close this case and shall transfer the following documents to petitioner's underlying habeas corpus action, *Hawkins v. Luebbers*, No. 4:02-CV-793-ERW (E.D. Mo.): ECF Nos. 1, 5, 8, and 11.

IT IS FURTHER ORDERED that the Clerk of Court shall refund to petitioner his \$2.05 initial partial filing fee and shall notify the Missouri Department of Corrections to suspend all future payments relative to the instant action.

IT IS FURTHER ORDERED that the Clerk of Court shall file a copy of this Memorandum and Order in *Hawkins v. Luebbers*, No. 4:02-CV-793-ERW (E.D. Mo.).

So Ordered this 18th day of February, 2014.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE